

### **REMARKS**

Claims 1-4 and 6-8 are pending in the instant application. Claims 5 and 9 remain canceled. Claims 1 and 2 have been amended. Support for the instant amendments can be found throughout the specification and in the claims as originally filed. Applicants request reconsideration of the subject application based on the following remarks.

No new matter has been introduced by the instant amendments.

Amendment of any claim herein is not to be construed as acquiescence to any of the rejections/objections set forth in the instant Office Action, and was done solely to expedite prosecution of the application. Applicants make these amendments without prejudice to pursuing the original subject matter of this application in a later filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter.

#### **35 U.S.C. §103 (a) Rejection**

Claims 1, 2, and 6-8 are rejected under 35 U.S.C. §103(a) as obvious by US 7,081,532 (Buerger et al.). It is alleged that Buerger discloses compounds which provide motivation to arrive at the compounds of the instant claims. Specifically, the Office Action alleges that compound 7 of Buerger provides for the compounds of the invention wherein the side chain phenyl ring is substituted with an alkylene-piperidine group. It is alleged that motivation exists in the Buerger reference to arrive at the Applicants' compounds because the Buerger compounds are close in structure to the Applicants' compounds and therefore will yield similar activity.

Applicants traverse but have amended claims 1 and 2 to remove the recitation of "piperidine" in the definition of R<sub>9</sub>. The Applicants' claims as amended are directed towards compounds having 4-methylhomopiperazine when n=0, or 4-methylpiperazine when n=1, in the definition of R<sub>9</sub>.

It is well-known that to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the reference(s) themselves or in the knowledge generally available to one of ordinary

skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference(s) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143.

There is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the cited reference to make the claimed invention as currently amended, nor is there a reasonable expectation of success.

The rejection is overcome and withdrawal of the rejection is respectfully requested.

#### Claim Objections

Claims 3 and 4 are objected to as allegedly being dependent on a rejected base claim. Claim 1 has been amended. Applicants contend that claims 3 and 4 are not longer dependent on a rejected base claim. Withdrawal of the objection is respectfully requested.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants' undersigned representative at the number below. Applicants thank the Examiner in advance for this courtesy.

The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 59300CIP (71970).

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Respectfully submitted,

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